

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

Dawnyell Flynn,

Case No. 2:24-cv-00083-CDS-DJA

Plaintiff,

Order

V.

NDOC, et al.,

## Defendants.

Order

Before the Court is Plaintiff Dawnzell Flynn’s *ex parte* motion for appointment of counsel (ECF No. 24), motion for leave to file an amended complaint (ECF No. 25), and motion to extend time (ECF No. 33). Because Plaintiff is now represented by counsel, the Court denies her *ex parte* motion for appointment of counsel as moot. Because certain of Plaintiff’s proposed amendments are futile, while others are not, the Court grants in part and denies in part Plaintiff’s motion to amend her complaint. Because Plaintiff has shown good cause, the Court grants her motion to extend time to serve Defendant Dario Sanchez.

### **Discussion**

I. Plaintiff's *ex parte* motion for appointment of counsel.

Plaintiff moves on an *ex parte* basis for appointment of counsel. (ECF No. 24). She does not explain why she filed her motion on an *ex parte* basis as required by Local Rule IA 7-2(b). So, the Court will change the designation of her motion from *ex parte*. Additionally, since Plaintiff filed her motion, she has retained counsel. (ECF No. 32). So, the Court denies her motion for appointment of counsel as moot.

**II. Plaintiff's motion for leave to file an amended complaint.**

Before Plaintiff retained counsel, she moved *pro se* to amend her complaint to add certain defendants, add a “case summary,” identify certain defendants, add certain claims, and attach affidavits from other inmates. (ECF No. 25-1). Certain of Plaintiff’s amendments are

1 supplemental claims regarding facts that occurred after Plaintiff filed her complaint. Otherwise,  
2 Plaintiff's amended complaint mirrors her original complaint, with Plaintiff adding her  
3 amendments on additional pages or by adding handwritten notations on her typed original  
4 complaint. Plaintiff sues the Nevada Department of Corrections ("NDOC"); Florence McClure  
5 Women's Correctional Center ("FMWCC"); the State of Nevada; Governor Joseph Lombardo;  
6 NDOC Director James Dzurenda; Inspector General Castalango; Associate Warden Monique  
7 Hubbard-Pickett; Warden William Reubart; Associate Warden Jennifer Nash; Associate Warden  
8 Gabriela Najera; Lieutenant Dario Sanchez; Lieutenant Celeste Kinane Wells; Sergeant  
9 Cassandra Poling; Sergeant Rodney Jefferson; Mailroom Corrections Officer Luis Solis;  
10 Corrections Officer T. Witherall; Corrections Officer Renee Gardner; Corrections Officer Lenora  
11 Clinkscales; Corrections Officer Gordon Gates; Library Clerk AAII Romero; and Nurse Bridge.

12 Defendants oppose Plaintiff's motion, arguing that the proposed amendments are futile.  
13 (ECF No. 27). Defendants also oppose Plaintiff's attempts to supplement her claims because she  
14 did not specifically request leave to supplement. Defendants also assert that "this Court remains  
15 obligated under 28 U.S.C. § 1915(e)(2) and 28 U.S.C. § 1915(a), and 42 U.S.C. § 1997e(c) to  
16 screen [Plaintiff's] proposed amended complaint..." (*Id.* at 4).

17 The Court grants in part and denies in part Plaintiff's motion to amend. The Court finds  
18 that certain of Plaintiff's proposed amendments are futile, but others are not. The Court also finds  
19 that Plaintiff has properly sought to supplement certain of her claims. Finally, because in order to  
20 conduct a futility analysis, the Court must employ Federal Rule of Civil Procedure 12(b)(6)—the  
21 same rule it applies when screening complaints—the Court effectively screens Plaintiff's  
22 proposed amended complaint. *See Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir.  
23 1988) (explaining that the "proper test to be applied when determining the legal sufficiency of a  
24 proposed amendment is identical to the one used when considering the sufficiency of a pleading  
25 challenged under Rule 12(b)(6)") (overruled on other grounds by *Ashcroft v. Iqbal*, 556 U.S. 662  
26 (2009)); *see Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (explaining that "[f]ailure to

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1 state a claim under § 1915A incorporates the familiar standard applied in the context of failure to  
 2 state a claim under Federal Rule of Civil Procedure 12(b)(6)".<sup>1</sup>

3       ***A. Legal standard.***

4       Under Rule 15 of the Federal Rules of Civil Procedure, once a party has amended its  
 5 pleadings as a matter of course, subsequent amendments are only permitted "with the opposing  
 6 party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Rule 15 provides that  
 7 "[t]he court should freely give leave when justice so requires." *Id.* Generally, the Ninth Circuit  
 8 has held that Rule 15(a) should be "applied with extreme liberality." *Eminence Capital, LLC v.*  
 9 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). "Five factors are taken into account to assess  
 10 the propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing  
 11 party, futility of amendment, and whether the plaintiff has previously amended the complaint."  
 12 *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014) (citing *Johnson v.*  
 13 *Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)); *see also Eminence Capital, LLC*, 316 F.3d at 1052  
 14 ("undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure  
 15 deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue  
 16 of allowance of the amendment, futility of amendment, etc.") (citing *Foman v. Davis*, 371 U.S.  
 17 178, 182 (1962)). "In exercising this discretion, a court must be guided by the underlying  
 18 purpose of Rule 15—to facilitate decision on the merits, rather than on the pleadings or  
 19 technicalities." *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991) (quoting *United*  
 20 *States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981)). Ultimately, there is considerable deference to  
 21 amendment and the analysis "should be performed with all inferences in favor of granting the  
 22 motion." *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

23       Federal Rule of Civil Procedure 15(d) allows for a party to supplement his pleading "[o]n  
 24 motion and reasonable notice" to set forth "any transaction, occurrence, or event that happened

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 26       <sup>1</sup> Because the Court effectively screens Plaintiff's complaint when conducting its futility analysis,  
 27 the Court does not reach Defendants' argument that the Court is "obligated" to screen Plaintiff's  
 28 complaint. Moreover, Plaintiff is not proceeding without paying the filing fee under 28 U.S.C.  
 § 1915. (ECF No. 1-1) (Receipt). So, Defendants' arguments that 28 U.S.C. §§ 1915(a) and  
 1915(e)(2) mandate screening are misplaced.

1 after the date of the pleading to be supplemented.” A supplemental pleading “cannot be used to  
 2 introduce a ‘separate, distinct and new cause of action.’” *Planned Parenthood of Southern*  
 3 *Arizona v. Neely*, 130 F.3d 400, 402 (9th Cir.1997) (citation omitted). The court may deny a  
 4 motion to supplement when the supplemental pleading could be the subject of a separate action.  
 5 *See id.* The court also may consider whether permitting the supplemental pleading will promote  
 6 judicial efficiency. *See id.*

7       The standard for determining futility of motions to amend under Federal Rule of Civil  
 8 Procedure 15(a) and motions to supplement under Federal Rule of Civil Procedure 15(d), is  
 9 identical to the one used when considering the sufficiency of a pleading challenged under Rule  
 10 12(b)(6). *See Miller*, 845 F.2d at 214; *see Yates v. Auto City* 76, 299 F.R.D. 611, 614 (N.D. Cal.  
 11 2013) (explaining that the “legal standard for granting or denying a motion to supplement under  
 12 Rule 15(d) is the same as the standard for granting or denying a motion under Rule 15(a)”)  
 13 (quoting *Athena Feminine Techs., Inc. v. Wilkes*, No. C 10-4868 SBA, 2013 WL 450147, at \*2  
 14 (N.D. Cal. Feb. 6, 2013)). The nonmovant bears the burden of showing why amendment should  
 15 not be granted. *Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 666 (Fed. Cir. 1986); *see also DCD*  
 16 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987) (“party opposing amendment bears  
 17 the burden of showing prejudice”); *United States for use & benefit of Source Helicopters, Div. of*  
 18 *Rogers Helicopters, Inc. v. Sayers Constr., LLC*, No. 2:19-v-1602-JCM-EJY, 2020 WL 3643431,  
 19 at \*1 (D. Nev. July 6, 2020) (“The party opposing amendment holds the burden to demonstrate  
 20 futility.”); *Akinola v. Severns*, No. 3:14-CV-00222-HDM, 2015 WL 456535, at \*2 (D. Nev. Feb.  
 21 2, 2015) (“party opposing the amendment carries the burden of showing why leave to amend  
 22 should not be granted.”). An amendment is futile only if no set of facts can be proved under the  
 23 amendment that would constitute a valid claim or defense. *Miller*, 845 F.2d at 214.

24           **B. Doe Defendants.**

25 Plaintiff asserts that she is amending her complaint to identify Doe Defendants. (ECF No.  
 26 25 at 1). However, she only identifies one Defendant that she previously identified as a Doe,  
 27 explaining that “Doe Law Library Clerk” is “AAII Romero.” (*Id.*). The Court previously  
 28 allowed Plaintiff’s First Amendment retaliation claim to proceed against Doe Law Library Clerk

1 when Plaintiff learned the clerk's identity. (ECF No. 15 at 15). So, Plaintiff's proposed  
2 amendment naming this Defendant is not futile.

3 On the other hand, Plaintiff asserts that she is naming "Lt. Celeste Wells as Celeste Kinlan  
4 Wells," "Hubbard-Pickett as Monique Hubbard-Pickett," and "Lt. Sanchez as Lt. Dario Sanchez,"  
5 (ECF No. 25 at 1). But Plaintiff did not previously name these Defendants as Does. And the  
6 Attorney General's Office has not indicated any difficulty identifying these Defendants. So, the  
7 Court finds that Plaintiff's proposed amendment providing more detailed names for these  
8 Defendants is redundant and thus, futile.

9 **C. State law claims.**

10 Plaintiff asserts that she is amending her complaint to show "jurisdiction as diverse 28  
11 USC 1367 to include state law tort claims." (*Id.*). 28 U.S.C. § 1367 provides that "in any civil  
12 action of which the district courts have original jurisdiction, the district courts shall have  
13 supplemental jurisdiction over all other claims that are so related to claims in the action within  
14 such original jurisdiction that they form part of the same case or controversy under Article III of  
15 the United States Constitution." However, Plaintiff does not explain why the Court should  
16 exercise supplemental jurisdiction under 28 U.S.C. § 1367 over her state law claims, especially  
17 because the Court already dismissed those claims (ECF No. 15 at 13-14) and because Plaintiff has  
18 not made any changes to her proposed amended complaint that would state a colorable state law  
19 claim. And because Plaintiff has not amended her complaint to state a colorable state law claim,  
20 her amendment requesting the Court to exercise supplemental jurisdiction over those claims is  
21 futile.

22 **D. Dzurenda, Jefferson, and Clinkscales.**

23 Plaintiff asserts that she is amending her complaint to add certain Defendants from her  
24 original complaint, specifically, Dzurenda, Jefferson, and Clinkscales. (ECF No. 25 at 1). The  
25 Court previously dismissed Plaintiff's claims against Dzurenda and Clinkscales without prejudice  
26 because Plaintiff only mentioned them in the caption and did not otherwise provide sufficient  
27 allegations to support a colorable claim against them. (ECF No. 15 at 14). The Court also  
28 previously allowed Plaintiff's First Amendment retaliation claim to proceed against Jefferson for

1 filing false notice of charges against Plaintiff because Plaintiff had filed reports about the prison  
2 chaplain. (ECF No. 15 at 10).

3           1.       Claims against Dzurenda

4 Plaintiff's proposed amended complaint alleges that Dzurenda ignored grievances that she  
5 filed about Gates' assaultive behavior. (ECF No. 25-1 at 8). Plaintiff also alleges that, between  
6 January 2024 and the present, Dzurenda and other Defendants "have participated in over (50)  
7 incidents that ha[ve] led to unlawful[ ] imprisonments of Plaintiff...Director Dzurenda has been  
8 advised and done nothing." (ECF No. 25-1 at 10).

9           The Court previously allowed Plaintiff's Eighth Amendment sexual assault claim to  
10 proceed against Defendants who Plaintiff alleged knew of Gates' behavior and failed to stop it.  
11 So, the Court does not find Plaintiff's amended claim that Dzurenda ignored her grievances about  
12 Gates' behavior to be futile. On the other hand, Plaintiff's allegation that Dzurenda and other  
13 Defendants have participated in fifty incidents between January 2024 and the present is too  
14 conclusory to state a claim upon which relief can be granted. Indeed, given the vague date range,  
15 it is unclear if Plaintiff is amending her complaint or seeking to supplement her claims. But in  
16 any event, the proposed amendment and/or supplement is futile.

17           2.       Claims against Clinkscales.

18 Plaintiff's proposed amendment alleges that, between January 2024 and the present,  
19 Clinkscales has denied Plaintiff meals and coerced a fellow inmate to file a false Prison Rape  
20 Elimination Act ("PREA") complaint against Plaintiff. (ECF No. 25-1 at 15). Plaintiff does not  
21 allege when Clinkscales took these actions, but liberally construing Plaintiff's complaint, these  
22 actions appear related to Plaintiff's original claims that the Defendants retaliated against her  
23 because of her complaints against the prison chaplain.

24           Prisoners have a First Amendment right to file prison grievances and to pursue civil rights  
25 litigation in the courts. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005). "Without those  
26 bedrock constitutional guarantees, inmates would be left with no viable mechanism to remedy  
27 prison injustices. And because purely retaliatory actions taken against a prisoner for having  
28 exercised those rights necessarily undermine those protections, such actions violate the

1 Constitution quite apart from any underlying misconduct they are designed to shield.” *Id.* To  
2 state a viable First Amendment retaliation claim in the prison context, a plaintiff must allege:  
3 “(1) [a]n assertion that a state actor took some adverse action against an inmate (2) because of  
4 (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his  
5 First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional  
6 goal.” *Id.* at 567–68. Total chilling is not required; it is enough if an official’s acts would chill  
7 or silence a person of ordinary firmness from future First Amendment activities. *Id.* at 568–69.  
8 A plaintiff who fails to allege a chilling effect may still state a claim if he alleges that he suffered  
9 some other harm that is more than minimal. *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir.  
10 2012).

11 Here, Plaintiff’s proposed amended complaint alleging a First Amendment retaliation  
12 claim against Clinkscales is not futile. Plaintiff alleges that Clinkscales refused to feed her and  
13 coerced an inmate to file a fake PREA complaint against Plaintiff because of Plaintiff’s  
14 complaints against the prison chaplain. These actions could arguably chill an inmate of ordinary  
15 firmness from future First Amendment activities and does not appear to have a legitimate  
16 correctional goal. So, Plaintiff alleges a colorable First Amendment retaliation claim against  
17 Clinkscales.

18           3.       Claims against Jefferson.

19 Plaintiff’s proposed amendment alleges that Jefferson has “continued the same conduct”  
20 without specifying which conduct he has continued. (ECF No. 25-1 at 11). Plaintiff also alleges  
21 that, at some unspecified time, Jefferson sanctioned her resulting in the loss of canteen privileges  
22 and yard privileges. (*Id.* at 15). These allegations are not sufficient to state a colorable amended  
23 or supplemental claim because Plaintiff does not provide sufficient facts about what conduct  
24 Jefferson continued or about when Jefferson sanctioned her or why. So, while Plaintiff’s re-  
25 asserted original claim for First Amendment retaliation against Jefferson is not futile, her  
26 amended claims that differ from her original complaint do not allege a colorable claim and are  
27 thus futile.

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1           **E. Case summary.**

2           Plaintiff includes a “case summary” at the beginning of her amended complaint. (ECF  
3 No. 25-1 at 3-7). In it, she does not allege any facts (with the exception of one fact, outlined  
4 below) but outlines the legal standards for doctrines and claims like qualified immunity,  
5 inalienable rights, equal rights, conspiracy to interfere with civil rights in violation of 42 U.S.C.  
6 § 1985, deliberate indifference, negligent infliction of emotional distress, and intentional  
7 infliction of emotional distress. (*Id.*). However, “[w]hile legal conclusions can provide the  
8 framework of a complaint, they must be supported with factual allegations.” *Ashcroft v. Iqbal*,  
9 556 U.S. 662, 679 (2009). Because Plaintiff does not support these legal conclusions with factual  
10 allegations, her “case summary” fails to state a claim upon which relief can be granted and is a  
11 futile amendment.

12           The one fact Plaintiff does provide in this section also fails to state a claim upon which  
13 relief can be granted. Plaintiff appears to allege that Nash violated the “Tom Bane Civil Rights  
14 Act 52 § 1” by alleging that Nash said, “we are the only female prison in Nevada we have no  
15 laws: we can do what the fuck we want to do here.” (ECF No. 25-1 at 4). The Tom Bane Civil  
16 Rights Act is a portion of the California Code which prohibits a person from interfering by threat,  
17 intimidation, or coercion with the exercise or enjoyment of another person’s rights under either  
18 the United States Constitution or the California Constitution. *See Cal. Civ. Code 52.1(b)*.  
19 However, Plaintiff has provided no reason why this California law would apply in this case. She  
20 also provides no facts about when Nash made this statement, to whom, or in what context. So,  
21 Plaintiff’s proposed amendment of this fact fails to state a claim upon which relief can be granted  
22 and would be futile.

23           **F. Claims against NDOC, FWCC, the State of Nevada, and Governor Lombardo.**

24           In screening Plaintiff’s original complaint, the Court dismissed Plaintiff’s claims against  
25 NDOC and FMWCC with prejudice. (ECF No. 15 at 3, 15). So, Plaintiff’s claims against these  
26 Defendants, raised again in her proposed amendment, are futile. Additionally, in screening  
27 Plaintiff’s original complaint, the Court explained that “[g]enerally, the State of Nevada and arms  
28 of the state cannot be sued in federal court.” (ECF No. 15 at 14) (citing *O’Connor v. State of*

1     *Nev.*, 686 F.2d 749, 750 (9th Cir. 1982)). And Plaintiff has not provided any amended claims  
 2 against the State of Nevada or explained why those claims are not barred by the Eleventh  
 3 Amendment. So, the Court finds that Plaintiff’s proposed amended claims against the State of  
 4 Nevada would be futile. Finally, Plaintiff names Governor Joseph Lombardo as a defendant in  
 5 his “individual and/or official capacity.” (ECF No. 25 at 2). However, Plaintiff does not allege  
 6 any facts in the body of her complaint about what actions Governor Lombardo took or did not  
 7 take. Additionally, Governor Lombardo in his official capacity is entitled to Eleventh  
 8 Amendment immunity because Plaintiff does not sue him for injunctive or declaratory relief, but  
 9 for damages. *See Association des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d  
 10 937, 943 (9th Cir. 2013). So, Plaintiff’s proposed amendment asserting claims against Governor  
 11 Lombardo would be futile.

12                  **G. Eighth Amendment sexual assault claim.**

13     The Court previously allowed Plaintiff’s Eighth Amendment sexual assault claim to  
 14 proceed against Gates for repeatedly inappropriately touching her and against Sanchez, Wells,  
 15 Nash, Najera, Hubbard-Pickett, and Castalango for knowing about Gates’ conduct and failing to  
 16 stop it. (ECF No. 15 at 6). Plaintiff’s amended complaint reasserts these claims. And so, in that  
 17 regard, it is not futile. Additionally, as outlined above, Plaintiff has amended her complaint to  
 18 add that Dzurenda knew about Gates’ behavior and failed to stop it and so, her newly amended  
 19 Eight Amendment sexual assault claim against Dzurenda is not futile.

20     However, the other change that Plaintiff makes to her Eighth Amendment sexual assault  
 21 claim is that, from January 2024 until the present, “all defendants” have continued to fail to  
 22 intervene to stop Gates’ conduct. (ECF No. 25-1 at 13). Plaintiff also added the words,  
 23 “continuing wrongs.” (*Id.* at 14). This amendment is more appropriately characterized as a  
 24 supplement. *See Fed. R. Civ. P. 15(d)*. However, regardless of how it is characterized, it does  
 25 not state a claim upon which relief can be granted because Plaintiff does not identify which  
 26 defendants have continued in their failure to stop Gates’ conduct, whether any new defendants are  
 27 responsible for this failure, or any facts surrounding these newly alleged failures. So, this  
 28 amendment is futile.

1           ***H. Eighth Amendment excessive force claim.***

2           The Court previously allowed Plaintiff's Eighth Amendment excessive force claim to  
 3 proceed against Gates for grabbing Plaintiff's wrist while cuffing her after her shower, breaking  
 4 her wrist, and pulling her so hard that her head slammed into shower hooks on the wall. Plaintiff  
 5 does not make any changes to this claim. So, her proposed amended complaint reasserting it is  
 6 not futile.

7           ***I. Fourteenth Amendment solitary confinement claim.***

8           The Court previously allowed Plaintiff's Fourteenth Amendment solitary confinement  
 9 claim to proceed against Doe Prison Defendants, when Plaintiff learns their identities, because  
 10 Plaintiff did not identify which Defendants sent her to solitary confinement. Plaintiff previously  
 11 alleged that she was in solitary confinement for six months and then an additional three years.  
 12 Plaintiff does not amend this claim to explain who placed her in solitary confinement for that  
 13 time. But, because her amended complaint reasserts these claims against these Doe Defendants,  
 14 her amendment is not futile.

15           However, Plaintiff's amendment also supplements her complaint to allege facts occurring  
 16 after she filed her complaint. Plaintiff's supplemental allegations assert that on November 5,  
 17 2024, Najera, Solis, Poling, Reubart, and Nash placed Plaintiff in solitary confinement, claiming  
 18 that Plaintiff's legal mail contained drugs and telling Plaintiff to drop her civil action to get out of  
 19 solitary. (ECF No. 25-1 at 11). Plaintiff claims that the "drugs" were a false reason because  
 20 really, Poling had been removing mail from the facility and lacing it with intoxicants. (ECF No.  
 21 25-1 at 15-17). Plaintiff claims that Solis, Gates, and Witherall took her to solitary.<sup>2</sup> (*Id.*). And  
 22 the next day, Solis, Najera, Hubbard-Pickett, Warden Reubart, and Poling threatened other  
 23 inmates in an attempt to get the inmates to say that Plaintiff had bullied them "to get drugs in their

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26           <sup>2</sup> Plaintiff also lists someone named "Freeman" as taking her to solitary. (ECF No. 25-1 at 15-  
 27 17). But Plaintiff does not otherwise name or identify this person as a defendant. Because  
 28 Plaintiff does not allege any other claims against this person other than that they took her to  
 solitary, her amendment adding this individual would be futile.

1 names.” (*Id.*). Plaintiff also alleges that Najera, Reubart, and Nash altered or rejected Plaintiff’s  
 2 disciplinary appeals in an effort to keep her locked up. (*Id.*).

3 Liberally construing Plaintiff’s amended complaint, although Plaintiff alleges actions that  
 4 took place after she filed her complaint, those actions appear related to and arising out of  
 5 Plaintiff’s original allegations. And so, even though Plaintiff is supplementing, rather than  
 6 amending her complaint, considering these claims together would promote judicial efficiency.  
 7 Plaintiff also alleges a colorable claim, so this amendment is not futile.

8 To state a cause of action for deprivation of due process, a plaintiff must first establish the  
 9 existence of a liberty interest for which the protection is sought. *Sandin v. Conner*, 515 U.S. 472,  
 10 478 (1995). The Supreme Court has held that a prisoner has a liberty interest when confinement  
 11 “imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents  
 12 of prison life.” *Id.* at 484. Punishing an inmate by assigning her to solitary confinement may  
 13 constitute an atypical and significant hardship, depending on the conditions of that confinement.  
 14 For example, the Ninth Circuit held that a “twenty-seven month confinement in the [intensive  
 15 management unit] imposed an atypical and significant hardship under any plausible baseline”  
 16 because, in addition to subjecting the inmate to standard solitary confinement conditions, it also  
 17 imposed on the inmate “a fixed and irreducible period of confinement” that far exceeded “the  
 18 limited period of confinement with periodic review afforded [to] inmates in the other segregated  
 19 housing units.” *Brown v. Or. Dep’t of Corr.*, 751 F.3d 983, 988 (9th Cir. 2014).

20 Here, Plaintiff has alleges a colorable solitary confinement due process claim. She has  
 21 alleged that she had a protected liberty interest in remaining in general population because she  
 22 had not done anything that would warrant her removal to solitary confinement. She alleges that  
 23 Najera, Solis, Poling, Reubart, Nash, Gates, Witherall, and Hubbard-Pickett worked together to  
 24 fabricate a reason for sending Plaintiff to solitary confinement and then fabricated reasons for  
 25 keeping her there, thereby depriving Plaintiff of her liberty interest without due process. So,  
 26 Plaintiff’s proposed amendment is not futile.

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1           ***J. Conspiracy to violate Constitutional rights claim.***

2           The Court previously dismissed Plaintiff's claim for conspiracy to violate Constitutional  
3 rights because she only provided conclusory allegations that all the defendants had a meeting of  
4 the minds to interfere with her rights. (ECF No. 15 at 9). Her proposed amended complaint does  
5 not cure this deficiency. So, Plaintiff's proposed amendment of this claim would be futile.

6           ***K. First Amendment retaliation claim.***

7           The Court previously allowed Plaintiff's First Amendment retaliation claim to proceed  
8 against defendants Sanchez, Wells, Jefferson, Najera, Nash, Hubbard-Pickett, and Reubart  
9 because they filed false notice of charges against Plaintiff due to her complaint against the prison  
10 chaplain. (ECF No. 15 at 10). As outlined above, the Court also allowed this claim to proceed  
11 against Doe Library Clerk when Plaintiff learned their identity. (*Id.*). So, Plaintiff's amendment  
12 re-asserting this claim against these defendants and correcting the identity of Doe Library Clerk  
13 to AAII Romero is not futile.

14           Additionally, as outlined above, Plaintiff has alleged that Clinkscales retaliated against her  
15 for filing complaints by denying her meals. (ECF No. 25-1 at 15). And the Court found that this  
16 amendment is not futile. Plaintiff also amends her complaint to allege that Gardner denied her  
17 meals and aided in coercing another inmate to file a PREA complaint against Plaintiff. (*Id.*). For  
18 the same reasons that Plaintiff's amended allegations against Clinkscales was not futile,  
19 Plaintiff's amended allegations against Gardner are also not futile.

20           However, Plaintiff's amended claims that Poling, Solis, Najera, Gates, Reubart, Nash, and  
21 Witherall "conspired to retaliate and hinder [Plaintiff] at her Nov. 8, early mediation conference"  
22 are futile. (CF No. 25-1 at 17). Because the actions she complains about occurred after she filed  
23 her complaint, Plaintiff's amendment is really a supplement. However, regardless of how the  
24 Court characterizes it, Plaintiff's proposed amendment is futile. Plaintiff does not provide any  
25 facts about what these Defendants did at the November 8th conference to hinder it or how those  
26 actions were taken in retaliation for her protected speech. So, the Court finds that this  
27 amendment would be futile.

1           **L. Eighth Amendment deliberate indifference claim.**

2           The Court previously allowed Plaintiff's deliberate indifference claim to proceed against  
3 Bridge because Bridge did not provide care for Plaintiff after she lost consciousness and suffered  
4 several "mini strokes." (ECF No. 15 at 11). Plaintiff's proposed amendment re-alleges this claim  
5 against Bridge and so, is not futile. However, the Court dismissed this claim without prejudice as  
6 alleged against Dzurenda. (*Id.*). Plaintiff's proposed amendment does not amend this claim other  
7 than to allege that Dzurenda ignored Plaintiff's grievances. (ECF No. 25-1 at 8). As outlined  
8 above, this amendment is futile because it does not provide sufficient facts to state a colorable  
9 claim against Dzurenda.

10           **M. Failure to supervise and train claim.**

11           The Court previously dismissed Plaintiff's supervisory liability claim without prejudice  
12 because she only stated in conclusory fashion that all the named defendants violated her  
13 constitutional rights when they failed to do training on how to report allegations of sexual assault.  
14 (ECF No. 15 at 12). Plaintiff's proposed amended complaint does not cure this deficiency. So,  
15 this amended claim would be futile.

16           **N. Fourteenth Amendment denial of access to the courts claim.**

17           The Court previously dismissed Plaintiff's denial-of-access-to-the-courts claim without  
18 prejudice because Plaintiff had not alleged that court dates that Gates caused her to miss caused  
19 her an actual injury. (ECF No. 15 at 13). Plaintiff's proposed amended complaint does not cure  
20 this deficiency. So, this amended claim would be futile.

21           **O. First Amendment mail claim.**

22           The Court previously allowed Plaintiff's First Amendment mail claim to proceed against  
23 Gates because Plaintiff alleged that Gates blocked her mail for three months. (ECF No. 15 at 13).  
24 Plaintiff's amended complaint re-alleges this claim against Gates and is not futile. Plaintiff's  
25 amended complaint alleges that Poling removed her legal mail from the facility and laced it with  
26 intoxicants. (ECF No. 25-1 at 15-17). Prisoners have a First Amendment right to send and  
27 receive mail. *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995). Plaintiff has alleged a  
28 colorable claim that Poling interfered with her mail. And because, liberally construing Plaintiff's

1 complaint, it appears that this claim is related to Plaintiff's prior claims regarding prison officials'  
2 retaliation against her for her complaints, the Court finds that to the extent Plaintiff raises this  
3 claim as a supplement, it would not be futile.

4 **P. State law claims.**

5 The Court previously dismissed Plaintiff's state law tort claims for IIED and negligence  
6 because the State of Nevada has not waived its immunity from suit conferred by the Eleventh  
7 Amendment in federal court. (ECF No. 15 at 13-14). As outlined above, Plaintiff has not alleged  
8 any amended or supplemental facts related to her state law tort claims. So, the Court finds that  
9 Plaintiff's proposed amendment would be futile.

10 Ultimately, the Court grants in part and denies in part Plaintiff's motion to amend her  
11 complaint. Plaintiff's motion to amend is granted as to the following claims, summarized below  
12 and as outlined in more detail herein:

- 13 • Eighth Amendment sexual assault against Gates, Sanchez, Wells, Nash, Najera, Hubbard-  
14 Pickett, Castalango, and Dzurenda.
- 15 • Eighth Amendment excessive force against Gates.
- 16 • Fourteenth Amendment solitary confinement against Doe Prison Defendants, Najera,  
17 Solis, Poling, Reubart, Nash, Gates, Witherall, and Hubbard-Pickett.
- 18 • First Amendment retaliation against Sanchez, Wells, Jefferson, Najera, Nash, Hubbard-  
19 Pickett, Reubart, AAII Romero, Clinkscales, and Gardner.
- 20 • Eighth Amendment deliberate indifference against Bridge.
- 21 • First Amendment mail claim against Gates and Poling.

22 Because the Court grants in part and denies in part the motion to amend, it will require  
23 Plaintiff to file a clean version of her amended complaint removing all futile facts, claims, and  
24 parties. Plaintiff may not seek to re-allege any dismissed claims or allegations the Court has  
25 deemed futile in her clean complaint. If Plaintiff seeks to do so, she must file a motion to amend  
26 her complaint.

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1       **III. Plaintiff's motion to extend time.**

2       Plaintiff moves to extend time to serve Sanchez. (ECF No. 33). Plaintiff explains that,  
3 while she was proceeding *pro se*, she was not provided access to the last known address of  
4 Sanchez after the Attorney General's Office declined to accept service on Sanchez's behalf. Now  
5 that she has an attorney, she has obtained Sanchez's address and is prepared to serve him.  
6 Defendants do not oppose the motion to extend time. (ECF No. 36).

7       Under Federal Rule of Civil Procedure 4(m),

8       If a defendant is not served within 90 days after the complaint is  
9 filed, the court—on motion or on its own after notice to the  
plaintiff—must dismiss the action without prejudice against that  
10 defendant or order that service be made within a specified time. But  
if the Plaintiff shows good cause for the failure, the court must  
11 extend the time for service for an appropriate period.

12       Here, Plaintiff has shown good cause for not serving Sanchez within the ninety-day  
13 timeframe. And Defendants do not oppose the motion. So, the Court grants Plaintiff's motion  
14 and will extend the time to serve Sanchez to sixty days after the date of this order.

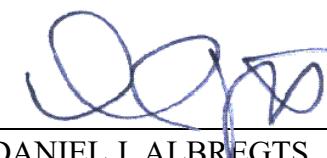
15  
16       **IT IS THEREFORE ORDERED** that Plaintiff's *ex parte* motion for appointment of  
17 counsel (ECF No. 24) is **denied as moot**. The Clerk of Court is kindly directed to change the  
18 designation of ECF No. 24 so that it is no longer *ex parte*.

19       **IT IS FURTHER ORDERED** that Plaintiff's motion to amend (ECF No. 25) is **granted**  
20 **in part and denied in part** as outlined herein. Plaintiff must file a clean amended complaint  
21 removing the futile facts, allegations, and claims on or before **April 14, 2025**.

22       **IT IS FURTHER ORDERED** that Plaintiff's motion to extend time (ECF No. 33) is  
23 **granted**. Plaintiff shall have until **May 12, 2025**, to serve Dario Sanchez.

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25       DATED: March 13, 2025

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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE